

# Chapter One: Introduction

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# Chapter One: Introduction

This chapter describes the statutory background of oil and gas leasing in Alaska, the Cook Inlet Areawide scope and status, the sale process, and the public process for future Cook Inlet areawide sales.

The state of Alaska is offering for lease all available state-owned acreage in its first Cook Inlet Areawide Oil and Gas Lease Sale, scheduled for April 21, 1999. The acreage lies within an area that encompasses approximately 4.2 million acres of uplands, tide, and submerged lands extending from just north of Wasilla to Anchor Point in the south, and between the Chugach and Kenai Mountains on the East and the Aleutian Range on the West (see Figure 1.1, Map of Cook Inlet Areawide Oil & Gas Lease Sale Area). The state may only lease lands in which it owns the subsurface estate. Approximately 2.8 million acres are being offered in Cook Inlet Areawide 1999.

The purpose of areawide leasing is to provide an established time each year that the state will offer for lease all available acreage within three geographical regions: Cook Inlet, the North Slope, and the Beaufort Sea. By conducting lease sales at a set time each year, the state will have a stable, predictable leasing program, which will allow companies to plan and develop their exploration strategies and budgets years in advance. The result will be more efficient exploration and earlier development, which will, in turn, benefit the state and its residents. Areawide sales are also efficient for the public and the state. Previously, the Alaska Department of Natural Resources (ADNR) evaluated noncontiguous, patchwork portions of a region and then offered them for lease. For each subsequent sale, ADNR repeated this exercise for other patchwork portions of the region often directly adjacent to those just evaluated. The public faced repeated requests to comment on areas with similar resources and issues or concerns. The state faced repeating costly analyses of resources and issues identical to those just analyzed. Areawide leasing allows a thorough, regionwide analysis, eliminates repeated confusing requests to the public and increases government efficiency as demanded by the public and the legislature.

## A. Statutory Background

The Alaska Constitution provides that the state's policy is "to encourage . . . the development of its resources by making them available for maximum use consistent with the public interest" and that the "legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, . . . for the maximum benefit of its people" (Alaska Constitution, art. VIII, §1, 2). To comply with this provision, the legislature enacted Title 38 of the Alaska Statutes (AS 38) and directed ADNR to implement the statutes.

Alaska Statute 38.05.035 governs the disposal of state owned subsurface interests and includes public notice requirements referred to in this document (AS 38.05.035(e)(5) and AS 38.05.945). Under AS 38.05.035(e), an ADNR director may not dispose of state land, resources, property, or interests, unless the director first determines in a written finding that such action will serve the best interests of the state. This written finding is known as a best interest finding and is a written analysis which describes for the public the facts and applicable law which are relevant to the disposal and gives a decision based on these factors. The finding must also discuss material issues that were raised during the period allowed for receipt of public comment. Two documents are issued by DO&G: a Preliminary Best Interest Finding and subsequently, a Final Best Interest Finding.

AS 38.05.035(e) prescribes what, at minimum, must be in these findings, including a summary of comments on the sale received by the division, which can be found in Appendix A of this finding. AS 38.05.035(g) lists the topics that the Division of Oil & Gas (DO&G) must consider and discuss within the best interest finding analysis:

- i. property descriptions and locations;
- ii. the petroleum potential of the sale area, in general terms;
- iii. fish and wildlife species and their habitats in the area;
- iv. the current and projected uses in the area, including uses and value of fish and wildlife;
- v. the governmental powers to regulate oil and gas exploration, development, production, and transportation;
- vi. the reasonably foreseeable cumulative effects of oil and gas exploration, development, production, and transportation on the sale area, including effects on subsistence uses, fish and wildlife habitat and populations and their uses, and historic and cultural resources;
- vii. lease stipulations and mitigation measures, including any measures to prevent and mitigate releases of oil and hazardous substances, to be included in the leases, and a discussion of the protections offered by these measures;
- viii. the method or methods most likely to be used to transport oil or gas from the lease sale area, and the advantages and disadvantages, and relative risks of each;
- ix. the reasonably foreseeable fiscal effects of the lease sale and the subsequent activity on the state and affected municipalities and communities, including the explicit and implicit subsidies associated with the lease sale, if any;
- x. the reasonably foreseeable effects of oil and gas exploration, development, production, and transportation on the municipalities and communities within or adjacent to the lease sale area; and
- xi. the bidding method or methods adopted by the commissioner under AS 38.05.180

A compilation of other laws and regulations applicable to oil and gas activities in Alaska can be found in Appendix B. If the proposed activity occurs in a coastal area, AS 46.40 requires that the activity be consistent with the ACMP, which includes approved local district coastal zone management plans.

## 1. Public Participation

The Alaska Constitution requires “prior public notice and other safeguards of the public interest as prescribed by law” prior to the leasing of state lands (Alaska Constitution, art. VIII, § 10).

Title 38 of the Alaska statutes requires DO&G to issue a preliminary best interest finding at least 180 days prior to an oil and gas lease sale. The division allows the public at least 60 days to review and comment on the preliminary finding analysis under AS 38.05.035(e)(5)(A). Comments are researched and considered by DO&G staff, and appropriate changes are made for the subsequent final finding. The division issues a final best interest finding at least 90 days prior to the sale. See AS 38.05.035(e)(5)(B).

The public notice statute, AS 38.05.945, includes specific provisions for best interest findings for oil and gas lease sales. These include:

- Publication of a legal notice in newspapers of statewide circulation and in newspapers of general circulation in the vicinity of the proposed action at least once a week for two consecutive weeks;
- For a preliminary finding, publication of a notice in display advertising form in the newspapers described above at least once a week for two consecutive weeks;
- Public service announcements on the electronic media serving the area to be affected by the proposed action; and
- One or more of the following: posting in a conspicuous location in the vicinity of the action; notification of parties known or likely to be affected by the action; or another method calculated to reach affected parties.

AS 38.05.946 provides that a municipality, an Alaska Native Claims Settlement Act (ANCSA) corporation, or nonprofit community organization entitled to receive a 30-day notice of issuance of either a preliminary or final best interest finding, may hold a hearing which the commissioner shall attend. The commissioner has the discretion to hold a public hearing also. Although not required by statute or regulation, the Alaska Department of Natural Resources (ADNR) may:

- (a) contact legislators serving areas affected by a lease sale and local governing bodies early in the lease sale process so that informational meetings with concerned citizens and organizations can be arranged; and
- (b) conduct its own public hearings in one or more communities affected by a proposed lease sale at least once during the public comment period immediately following the issuance of the preliminary best interest finding.

Additional meetings and hearings are intended to provide information to the public about a proposed lease sale in the area and to encourage public comment. All findings under AS 38.05.035(e) must include a summary of agency and public comments regarding the proposed disposal and ADNR's responses to those comments.

After a final best interest finding is issued, an individual or organization may request reconsideration at the agency level in accordance with AS 38.05.035(i). A request for reconsideration of a best interest finding must be filed with the commissioner of ADNR within 20 days after the issuance of the final best interest finding. In order to file a request for reconsideration, a person must have "meaningfully participated" in the administrative review process and must be affected<sup>1</sup> by the final decision. The term "meaningfully participated" means that the person (1) submitted written comment during a public comment period; or (2) presented oral testimony at a public hearing. An issue must be raised during a comment period, but not necessarily by the individual, in order to be the basis for a request for reconsideration.

A person may appeal to the superior court only if the person requested reconsideration at the agency level and may appeal only those points the person raised in the request for reconsideration (AS 38.05.035(l)). By requiring that a party exhaust the administrative review and reconsideration process before appealing to the superior court, the agency is given the fullest opportunity to review, analyze, and respond to the appealed concerns prior to litigation. For the purposes of review, the person appealing must state and prove the defect alleged to exist within the best interest finding.

## **2. Best Interest Finding Scope of Review**

The scope of review and best interest finding are based on the facts and issues known, or made known, to the director and may address only reasonably foreseeable, significant effects of the uses proposed to be authorized by the disposal (AS 38.05.035(e)(1)(A)). Legislative history indicates that for an effect to be "reasonably foreseeable": (1) there is some cause/result connection between the proposed disposal and the effect to be evaluated; (2) there is a reasonable probability that the effect will occur as a result of the disposal; and (3) the effect will occur within a predictable time after the disposal. These practical constraints eliminate speculation about potential but improbable future effects and focuses the best interest finding on those effects which are most likely to occur as a result of the proposed lease sale disposal, such as effects of exploration. It is impossible to predict whether, let alone when and where, development or production, or related facilities

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<sup>1</sup> Alaska case law defines "a person affected by a decision" as someone who has a personal stake in the results of the decision. *Sisters of Providence v. Dept. of Health & Social Services*, 648 P. 2d 970, 974 (Alaska 1982).

might result.<sup>2</sup> This concept is embraced in AS 38.05.035(h) which states that “the director may not be required to speculate about future effects subject to future permitting that cannot reasonably be determined until the project or proposed use for which a written best interest finding is required is more specifically defined, including speculation about (1) the exact location and size of an ultimate use and related facilities.”

A reasonably foreseeable effect must also be "significant." Significant means a known and noticeable impact on or within a reasonable proximity to the area involved in the disposal. Public input assists in providing a body of information for the best interest finding review and analysis that is as complete as possible. Information provided by agencies and the public assist the director in:

- reviewing all of the facts and issues;
- determining which are material to the decision of whether to lease the area in question;
- establishing the scope of the review for that decision by determining the reasonably foreseeable, significant effects of leasing that arise from those material facts and issues; and
- balancing those effects to determine under what conditions, if any, leasing the area will serve the best interests of the state.

### 3. Phased Review

Phased review recognizes that leasing of state land may result in future projects that cannot be predicted or planned with any certainty or specificity at the time the best interest finding for the lease sale is prepared and that such projects will require future detailed site-specific review prior to approval. In oil and gas leasing, it cannot be determined with any specificity or definition at the time of leasing if, when, where, how, or what kind of production might ultimately occur, as the result of leasing. Advances or the lack of advances in technology, along with market changes, while they cannot be predicted, may determine the answers to some of these questions. The lease sale only authorizes the transfer of mineral interests. The best interest finding is limited to a discussion of the facts that are known to the Director at the time of the preparation of the finding, and material to the issues set out in AS 38.05.035(g) or raised during the public comment period.

For example, Chapter Five discusses likely methods of oil and gas transportation, such as use of pipelines in a northern environment, with attention to the known physical and biological characteristics of the Cook Inlet lease sale region. When, what kind, or where individual pipelines may be built cannot reasonably be determined at the time of the lease sale and so are not specifically discussed. The statute does not require such speculation concerning possible future development activities, which like future pipelines, if any, will be subject to independent site specific review and permitting requirements, is not required at the time the best interest finding is prepared. Additional authorizations, such as plans of operation and permits, are required for post lease sale activities, exploration, development, production, and transportation phases. The analysis of proposed leasing focuses only on facts known at the time of the best interest finding and reasonably foreseeable significant effects of leasing and subsequent post lease sale activities.

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<sup>2</sup> The probability that commercial production will ever occur on a tract offered in an oil and gas lease sale is very low. Statistics compiled by ADNR indicate that about half of the tracts (51.6 percent) offered in state oil and gas lease sales have been leased. Of these leased tracts, slightly more than 10 percent have actually been drilled on. About 5 percent of the tracts leased have been commercially developed for oil and gas production. This means that only a small percentage (approximately 3 percent) of state lands offered for lease have been commercially developed for oil and gas production (Kornbrath, 1995). It is important to note that the 3 percent production success to tracts offered ratio is a statewide average for sales held over a 33+ year time period. Considering changes in oil and gas recovery technology in recent decades, and that tracts continue to be offered and reoffered after they are relinquished, use of this average to estimate future effects of this sale, such as total surface impact, would be unreliable and misleading. For a discussion on surface impact as a result of oil and gas activities, see Chapter Six.

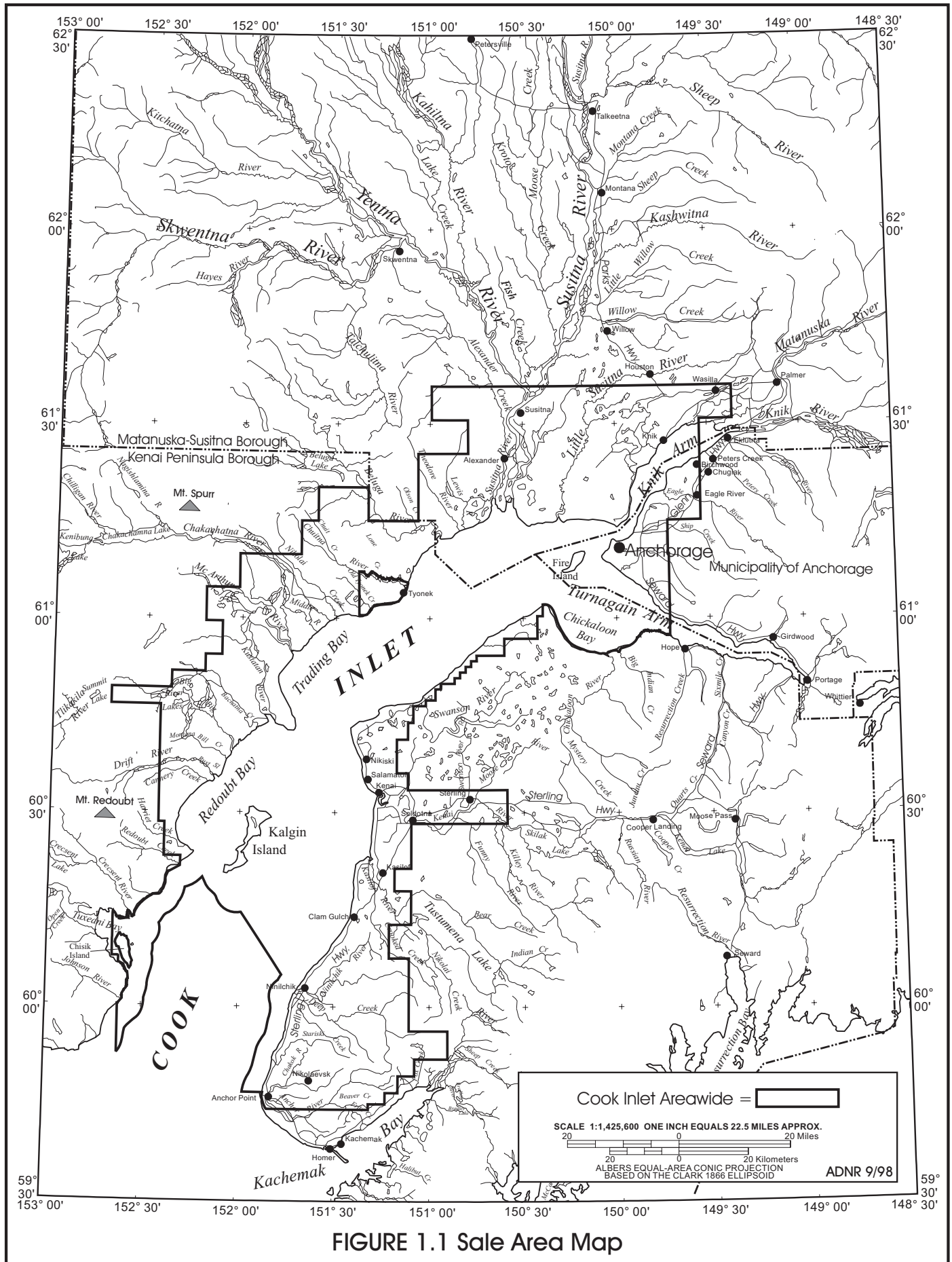


FIGURE 1.1 Sale Area Map

## **Cook Inlet Areawide Oil and Gas Lease Sale**

Publication of this final best interest finding follows professional and technical review of social, economic, environmental, geological, and geophysical information about the Cook Inlet Areawide sale area, (see figure 1.1) as well as comments received. This document describes the sale area and presents the department's review of the area's resources and history. It discusses the reasonably foreseeable effects that may occur as a result of oil and gas exploration, development, production, and transportation within the sale area. It also presents mitigation measures, including lessee advisories, to be imposed as plans of operation permit terms designed to reduce or eliminate any and all reasonably foreseeable adverse effects.

### **1. Cook Inlet Areawide Scope of Review**

The scope of review in this finding is limited, under AS 38.05.035(e)(1)(B), to facts known to the director at the time of the preparation of the best interest finding and that are material to the matters set out in AS 38.05.035(g)(1)(B). This includes the reasonably foreseeable cumulative effects of oil and gas exploration, development, production, and transportation on the sale area. Post lease sale exploration, development, production, and transportation activities will be subject to further review by the appropriate government agencies when applications are submitted by lessees. Every activity on an oil and gas lease is subject to public review and agency permitting. This finding discusses the known and reasonably foreseeable significant effects in general terms that may occur with oil and gas exploration, development, production, and transportation within the sale area. It also discusses the mitigation measures to be imposed as terms of the sale, as lease provisions, and as plans of operation permit terms designed to reduce or eliminate any possible adverse effects.

The lease merely gives the lessee, subject to the provisions of the lease, the non-exclusive right to conduct geological and geophysical exploration for oil, gas, and associated substances within the leased area; and the exclusive right to drill for, extract, remove, clean, process, and dispose of any oil, gas, or associated substances that may underlie the lands described by the lease. While the lease gives the lessee the right to conduct these activities, the lease sale itself does not authorize any exploration or development activities by the lessee on leased tracts. Before any operation may be undertaken on the leased area, the lessee is required to comply with all applicable statutes and regulations, and secure approval of a plan of operations and all applicable permits.

State approval is required before the exploration phase may proceed (see Chapter Six on the post-lease sale phases). Before non-seismic exploration activities can occur on leased lands, the lessee must submit a "plan of operation" and secure all applicable permits. Additional permits must also be prepared, and approved by the state, for any later development or production phase.

With the exception of geophysical (seismic) surveys, all activities, such as exploration drilling, require a plan of operations approved by ADNOR. Seismic surveys require a geophysical exploration permit from ADNOR. Plans of operation must identify the specific measures, design criteria, construction methods, and standards that will be employed to meet the provisions of the lease. Plans of operation are subject to extensive technical review by a number of local, state, and federal agencies. They are also subject to consistency with the Alaska Coastal Management Program (ACMP) standards, if the affected lands are within the coastal zone. The plans are available for public review upon submission to the state. Oil and gas exploration, development, or production-related activities will be permitted only if proposed future operations comply with all borough, state, and federal laws and the provisions of the lease.

Some disposals may result in future projects that cannot be predicted or planned with any certainty or specificity at the initial disposal stage and that will require future detailed review for authorizations needed before commencement. For example in oil and gas leasing, it cannot be determined with any specificity or definition at the time of leasing if, when, where, how, or what kind of production may occur as the result of the leasing and exploration. ADNOR is conditioning this best interest determination and any leases ultimately



issued under it with a number of mitigation measures designed to ensure that any future exploration, development, production, and transportation activities will serve the best interests of the state. These mitigation measures have been developed by ADNR through review of the material facts and issues and public comment including the reasonably foreseeable cumulative effects of oil and gas exploration, development, production, and transportation on the sale area.

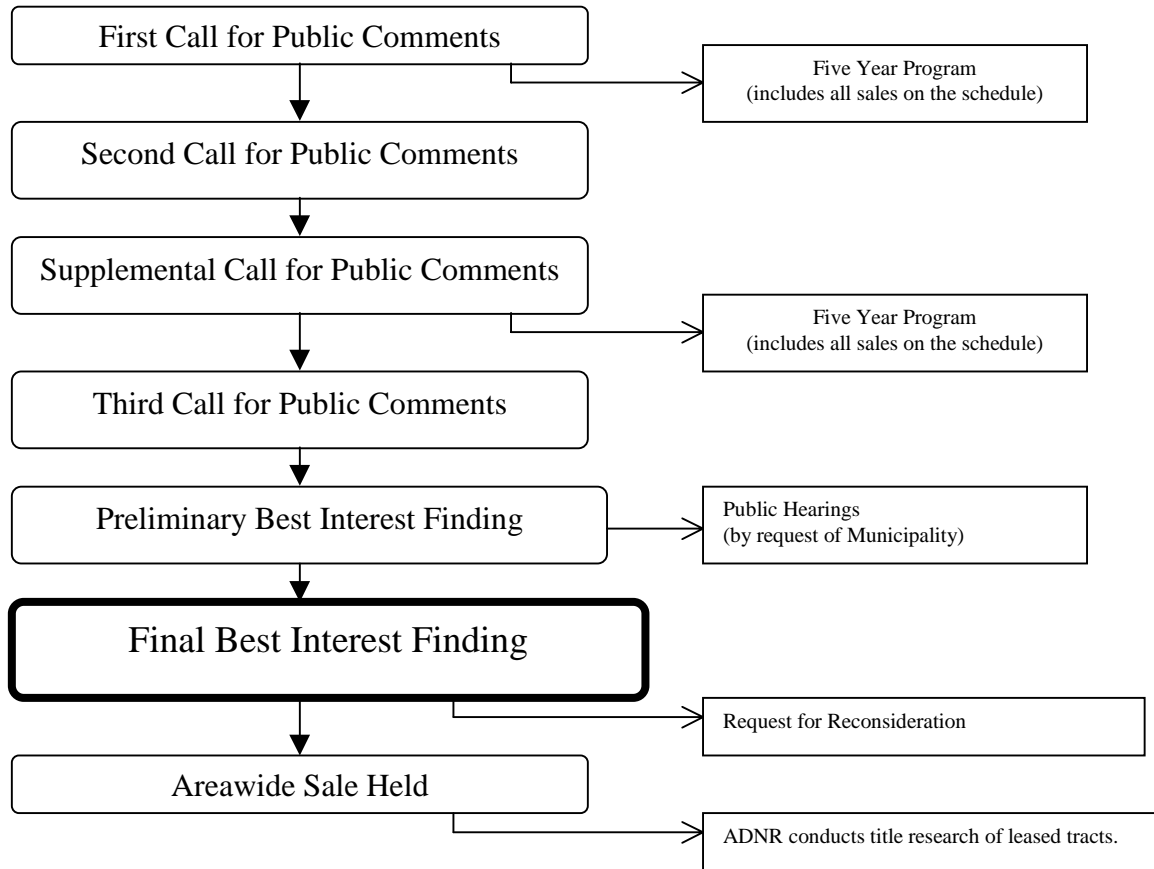
## **2. Cook Inlet Areawide Process**

### **a. Calls for Comments**

The Cook Inlet Areawide was first proposed for leasing as Sale 85 in the 1993 edition of the Five-Year Oil and Gas Leasing Program. The proposed sale area then included onshore acreage and offshore tide and submerged lands in the Cook Inlet basin and Shelikof Strait. On July 21, 1992, the division released a Call for Comments on proposed state of Alaska Oil and Gas Lease Sales for 1996-1997. To coordinate with the federal OCS Sale 149, the department issued a notice in July 1993 proposing to conduct a new lease sale in July 1995. In December, DO&G distributed a Call for Comments on both 85A and Sale 85 announcing the deletion of Shelikof Strait from both sale areas and the deletion of the Lower Cook Inlet area from Sale 85A. On July 7, 1994, DO&G issued a Call for Comments on the revised Five-Year Leasing schedule, listing Sale 85 as Cook Inlet/Kamishak Bay. On June 18, 1996, the division issued a Call for Nominations for proposed Lease Sale 85. In January 1997, the agency issued a third Call for Comments to request specific information about proposed Sale 85, Cook Inlet Areawide. The comment period closed July 28, 1997.

A preliminary finding was issued on March 31, 1998 followed by a 90-day comment period which closed on June 29, 1998. During this time public hearings were held in Soldotna (April 27), Palmer (April 29), Anchorage (April 30) and Homer (May 7). The comments received contributed to the department's analysis of the sale's potential effects and selection of the mitigation measures, and are summarized in Appendix A.

# Cook Inlet Areawide Public Process



## **b. Cook Inlet Stakeholders**

As an outcome of public concern over Sale 85A, which was held in December 1996, Governor Knowles convened a stakeholders group in February 1997. The group discussed the relevant issues and made recommendations to the governor concerning oil and gas activity. One of their recommendations was that another stakeholder group form in advance of the Cook Inlet Areawide lease sale. In July 1997, ADNOR contracted Gene Burden to be a facilitator responsible for selecting the stakeholder representatives and for overseeing the stakeholder process. Mr. Burden, a former Department of Environmental Conservation Commissioner, had also been the facilitator for the Sale 85A stakeholder group.

Mr. Burden selected 11 individuals representing tourism; private property owners in the Matanuska-Susitna and Kenai Boroughs, and the Municipality of Anchorage; the oil industry; Native corporations; Native Tribal Councils; oil and gas support industries; environmental organizations; commercial fishing; and sports fishing. For four days in September and three days during October, the stakeholders conducted informational workshops, which were open for the public to observe. Workshops were conducted in Wasilla, Anchorage, and Soldotna. Each evening following the September daily sessions the stakeholders convened public meetings, during which they heard testimony from individuals. These evening meetings were held in Wasilla, Anchorage, Soldotna, and Homer. Concerns raised by individuals and by other stakeholders were discussed during the daytime workshops.

The 11 members were able to reach full consensus on a number of items and forwarded their recommendations to the ADNOR Commissioner (see Appendix D for Stakeholder recommendations). The Commissioner adopted all consensus recommendations which did not require legislative action: 1) the public comment period was increased to 90 days; 2) ADNOR adopted a “hearing panel” approach to the public meetings that were conducted during this 90-day comment period; 3) the maps being provided to the public have been vastly improved, so that one will have a clearer picture of exactly which lands are included in the lease sale; and 4) all recommendations concerning changes and additions to the text of this finding have been incorporated. Additional recommendations require action by the legislature. To date, the legislature has not acted.

## **c. Post-Sale Title Search**

The Cook Inlet region has been divided into tracts that will remain fixed for future sales. The extent of the state’s ownership interest in these lands will not be determined prior to the sale. Instead, following the sale, ADNOR will verify title only for acreage that is leased. Therefore, should a potential bidder require title or land status information for a particular tract prior to the sale, it will be the bidder’s responsibility to obtain that information from ADNOR’s public records. It is possible that a tract included in the sale may contain land that the state cannot legally lease (existing lease, federal, Native or private land, etc.). Following the sale ADNOR will complete the title work and issue all of the leases. The actual number of months between the sale date and issuance of lessees will depend on the number of tracts leased and the complexity of the land holdings involved.

## **d. Future Cook Inlet Sales**

Previously, a best interest finding had a life of five years. As a result of amendments to AS 38.05.035(e)(6)(G) and AS 38.05.180(w) by the legislature, once a finding has been written for an areawide sale, ADNOR can then conduct a lease sale in that same area each year for up to ten years without having to repeat the entire finding process. However, a process similar to the following will be used. Annually, before holding a sale, DO&G will make a determination whether a new finding is required. Approximately nine months before a sale, ADNOR will issue a call for comments requesting substantial new information that has become available since the most recent finding for that sale area was written. This request, sent to agencies

and individuals on the division's mailing list, will be noticed in statewide and local newspapers with prominent display ads. Agencies and the public will be given approximately two months in which to provide any new information. Based on information received, ADNDR will determine whether or not it is necessary to revise the finding. Then, based on this determination, ADNDR will either issue a supplement to the finding, or a Decision of No New Information 90 days prior to the sale. Any person that has commented during the prescribed time, will have the reconsideration and appeal rights as described in AS 38.05.035.

Mitigation measures developed in the first Cook Inlet Areawide best interest finding will be carried on leases sold in this Cook Inlet sale and in all future Cook Inlet sales during the life of the finding unless, as a result of new information, ADNDR deems it necessary to change some of the measures, or add additional ones. A new coastal management consistency review will be done whenever new information or conditions suggest the areawide lease sale may no longer be consistent with ACMP standards.

Ten years following the Cook Inlet Areawide Lease Sale, DO&G will be required to again, go through the entire best interest finding process.

## Lease Sale Public Process

(During life of finding)

